IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13820 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RPG LIFE SCIENCES LTD. (PREVIOUSLY KNOWN AS SEARLE) - Petitioner

Versus

STATE OF GUJARAT THR' SECRETARY (FINANCE) & 3 - Respondents

==========

Appearance :

MR TANVISH U BHATT for Petitioner
MR MIHIR H.JOSHI, ADDL.ADVOCATE GENERAL WITH MR SS SHAH, ASSTT.OVERNMENT PLEADER for Respondents.

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 21/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Rule. Mr.S.S.Shah, learned Government Pleader, waives service of notice of rule on behalf of the respondents. On the joint request of the learned advocates for the parties, the petition is taken up for final disposal today.

2. By filing the instant petition under Article 226 of the Constitution, the petitioner i.e. R.P.G.Life Sciences Limited, which was previously known as Searle India Limited, has prayed to issue a writ of mandamus or any other appropriate writ or order dated March 23, 2006, passed by the respondent No.2 i.e. Commissioner of Sales-Tax, Gujarat State, Ahmedabad, by which determination order dated July 18, 1998 passed under Section 62 of the Gujarat Sales-Tax Act, 1969 [“the Act” for short] is revised holding that the petitioner is liable to pay purchase-tax.

3. The petitioner is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing and selling pesticides as well as other pharmaceutical products manufactured at its address mentioned in the cause-title of the petition. It is the case of the petitioner that a legal issue relating to levy of purchase-tax in the context of the purchase

from a unit which is exempted from sales-tax under the incentive scheme, had arisen in the case of the petitioner. Therefore, the petitioner had approached the respondent No.3 in the year 1998 for deciding the said legal issue by passing a determination order under Section 62 of the Act. The petitioner claims that on July 18, 1998, the respondent No.3 passed a determination order under Section 62 of the Act holding that the petitioner was not required to pay any purchase tax on the goods purchased from a Unit, which is entitled to sales-tax exemption under the relevant sales-tax incentive schemes. A copy of the said determination order dated July 18, 1998 is produced by the petitioner at Annexure-A to the petition. The respondent No.2 i.e. The Commissioner of Sales-Tax, Gujarat State, Ahmedabad had sought to revise the said order after issuing notice dated December 20, 2000 to the petitioner. The said notice was challenged by the petitioner by way of filing Special Civil Application No.521 of 2001. The Division Bench of this Court comprising B.C.Patel,J.(as he then was) and D.A.Mehta,J., vide judgment dated April 24, 2001 quashed initiation of revision proceedings holding that the same was without jurisdiction, since respondent No.3 had passed determination order under Section 62 of the Act, acting in capacity of and under the instructions of

the respondent No.2. A copy of the judgment delivered by the High Court in Special Civil Application No.521 of 2001 is produced by the petitioner at Annexure-B to the petition. The case of the petitioner is that the respondent No.2, in flagrant defiance of binding precedent of this Court with regard to jurisdiction of revision of determination order, issued notice dated March 17, 2005 to the petitioner intending to revise the determination order dated July 18, 1998 passed under Section 62 of the Act on the ground that the same was not in consonance with the ratio laid down by the High Court in cases of (i) M/s.Madhu Silica Pvt.Ltd. (1992) 85 STC 258, and (ii) M/s.Cheminova (2002)126 STC 334. A copy of notice dated March 17, 2005 issued by the respondent No.2 is produced by the petitioner at Annexure-C to the petition. It is the case of the petitioner that on receipt of the notice, reply was filed, but, without considering the said reply, by the impugned order dated March 23, 2006, determination order dated July 18, 1998 was revised holding that the petitioner is liable to pay purchase tax. In the said order it was stated that none had appeared on behalf of the petitioner. Therefore, the petitioner applied to the respondent No.2 to reconsider the matter. The record does not indicate that the matter was reconsidered by the respondent No.2. However, by an

order dated July 1, 2006, the bank account of the petitioner was attached and the petitioner is served with notice under Section 152 of the Bombay Land Revenue Code. The case of the petitioner is that the order dated March 23, 2006 is without jurisdiction and, therefore, the same should be set aside, more particularly in view of decision of the High Court rendered in Special Civil Application No.521 of 2001. Under the circumstances, the petitioner has filed the instant petition and claimed relief to which reference is made earlier.

4. Though the respondents are duly served, none of them has filed reply controverting the averments made in the petition.

5. This Court has heard Mr.Tanvish Bhatt, learned counsel for the petitioner and Mr.Mihir H.Joshi, learned Additional Advocate General, with Mr.S.S.Shah, learned Government Pleader, for the State, at length and in great detail. This Court has also taken into consideration the documents forming part of the petition. From the record of the case, it is evident that determination order under Section 62 of the Act was passed on July 18, 1998 by the respondent No.3 in the case of the petitioner itself. That order was sought to be revised by issuing notice dated December 20, 2000, which was challenged in Special

Civil Application No.521 of 2001. The judgment delivered by the High Court indicates that notice dated December 20, 200 was quashed holding that initiation of revision proceedings was without jurisdiction. The record does not indicate that the judgment delivered by the High Court in Special Civil Application No.521 of 2001 was challenged before higher forum. Therefore, it would be reasonable to proceed on the footing that the judgment delivered by the High Court was accepted by the respondents. Under the circumstances, another notice dated March 17,2005 could not have been issued by the respondent No.2 to revise order dated July 18, 1998, which was passed under Section 62 of the Act. The order dated March 23, 2006 revising determination order dated July 18, 1998 passed under Section 62 of the Act, therefore, will have to be regarded as one without jurisdiction and is liable to be set aside. The petition, therefore, must succeed.

For the foregoing reasons, the petition succeeds. The order dated March 23, 2006 passed by the respondent No.2, by which determination order dated July 18, 1998 passed under Section 62 of the Act in the case of the petitioner, is revised, is hereby set aside. Rule is made absolute. There shall be no order as to costs.

[J.M.PANCHAL, J.] [SMT.ABHILASHA KUMARI,J.]

(patel)